

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VERONICA S. BLACK,

Plaintiff,

CASE NO. 11-13651

v.

HON. MARIANNE O. BATTANI

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**OPINION AND ORDER OVERRULING PLAINTIFF'S OBJECTIONS,
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, AND
DISMISSING THE CASE WITH PREJUDICE UNDER FED. R. CIV. P. 41(b)**

Before the Court are Plaintiff Veronica Black's objections (Doc. 12) to the Magistrate Judge's May 22, 2012 Report and Recommendation ("R&R") (Doc. 11). In the R&R, the Magistrate Judge recommended that the Court dismiss this case with prejudice for want of prosecution under Rule 41(b) of the Federal Rules of Civil Procedure. For the reasons that follow, the Court **OVERRULES** Plaintiff's objections, **ADOPTS** the R&R, and **DISMISSES THE CASE WITH PREJUDICE FOR WANT OF PROSECUTION** pursuant to Rule 41(b).

I. BACKGROUND

Pursuant to the scheduling order entered in this matter, Plaintiff's motion for summary judgment was due on or before January 6, 2012. (Doc. 7). Plaintiff filed a motion requesting an extension of that deadline, which the Magistrate Judge granted, and a new deadline of February 15, 2012, was set. Since no motion was filed by that deadline, the Magistrate Judge entered an order on March 8, 2012, notifying Plaintiff

that if she did not file a dispositive motion by March 23, 2012, he would issue a report and recommendation that the case be dismissed with prejudice under Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. 9). On March 20, 2012, Plaintiff filed another request for an extension of the motion deadline, which was granted, and a new deadline of April 23, 2012, was set. On May 22, 2012, having not received Plaintiff's motion for summary judgment, the Magistrate Judge issued the R&R in which he recommended the case be dismissed with prejudice for want of prosecution under Rule 41(b). (Doc. 11). Plaintiff's timely objections to that R&R are now before the Court. (Doc. 12).

II. STANDARD OF REVIEW

A district court must conduct a de novo review of the parts of a magistrate judge's report and recommendation to which a party objects. 28 U.S.C. § 636(b)(1). The district "court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate" judge. Id. The requirement of de novo review "is a statutory recognition that Article III of the United States Constitution mandates that the judicial power of the United States be vested in judges with life tenure." United States v. Shami, 754 F.2d 670, 672 (6th Cir. 1985). Accordingly, Congress enacted 28 U.S.C. § 636(b)(1) to "insure[] that the district judge would be the final arbiter" of a matter referred to a magistrate judge. Flournoy v. Marshall, 842 F.2d 875, 878 (6th Cir. 1987).

III. ANALYSIS

Plaintiff objects to the Magistrate Judge's recommendation of a Rule 41(b) dismissal by explaining that she failed to meet the thrice-extended deadline to file her motion for summary judgment because she "mis-calendared" the April 23, 2012 due

date as July 23, 2012. (Doc. 12 at p. 2). Plaintiff further requests under Rule 6(b) that she be permitted to file her motion by July 23, 2012, the date on which she mistakenly believed it was due. Id.

In light of Plaintiff's recurring failures to follow Court-ordered deadlines, the Court does not consider her "mis-calendaring" of dates as "good cause" under Rule 6(b) and declines to grant Plaintiff a fourth deadline extension. The Court notes that, despite specific warnings and instructions from the Magistrate Judge, Plaintiff has failed to undertake a meaningful effort to prosecute this lawsuit in a diligent manner. Accordingly, Rule 41(b) dismissal is warranted and Plaintiff's objection is overruled.

IV. CONCLUSION

For the reasons stated above, the Court **OVERRULES** Plaintiff's objections (Doc. 12), **ADOPTS** the R&R (Doc. 11), and **DISMISSES THE CASE WITH PREJUDICE** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: July 19, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Order was served upon all parties of record via the Court's ECF Filing System.

s/Bernadette M. Thebolt
Case Manager